IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5645 of 2007()

CRIME NO. 616/07 OF KAYAMKULAM POLICE STATION

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PETITIONER/8TH ACCUSED

MOHAMMED SHAFEEQU,
PUTHENTHARAYIL, CHERAVALLY,
KAYAMKULAM.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE, KAYAMKULAM
POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5645 of 2007

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Dated this the 19th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 8th accused. The petitioner, along with the co-accused, faces allegations, inter alia, for offences punishable under Sections 308, 153A r/w. 149 I.P.C. The accused persons allegedly caused disturbance to the proper running of the temple in the locality. They do not belong to Hindu community. Objections were raised by the temple worshipers. Infuriated by the conduct on the part of the devotees, the accused persons constituted themselves into an unlawful assembly. In pursuance of their common object, an attack was unleashed on the temple and the persons who raised objection against the conduct of the accused. The incident took place on 28.8.2007. As many as nine persons had suffered injuries. Damage was suffered by the temple also. Investigation is in progress. The co-accused, who have been arrested, have been ordered to be enlarged on bail, subject to conditions as per order dt. 17.9.2007 in B.A. 5512 of 2007.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that anticipatory bail may be granted to the petitioner. His name is not mentioned in the F.I.R. Even going by the allegations, no disrespect was intended and no conduct was directed against members of Hindu community. It was only a dispute between members of the family of the defacto complainant on one hand and the accused on the other.

3. The learned Prosecutor opposes the application. There are no circumstances to justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner, submits the Prosecutor.

4. I find merit in the opposition raised by the learned Prosecutor. I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must, like the co-accused, resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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